

House Study Bill 189 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON VANDER LINDEN)

A BILL FOR

1 An Act requiring the licensure of flexible credit lenders, and
2 providing criminal and civil penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **536B.1 Title.**

2 This chapter shall be known and may be cited as the "*Iowa*
3 *Flexible Loan Act*".

4 Sec. 2. NEW SECTION. **536B.2 Definitions.**

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Annual percentage rate*" means the measure of the cost
8 of credit, expressed as a yearly rate, that relates the amount
9 extended to a consumer on a flexible credit loan to the amount
10 and timing of payments made, as computed under the federal
11 Truth in Lending Act.

12 2. "*Consumer*" means an individual who obtains a flexible
13 credit loan.

14 3. "*Federal Truth in Lending Act*" means as defined in
15 section 537.1302.

16 4. "*Finance charge*" means the amount payable by a consumer
17 incident to or as a condition of the extension of a flexible
18 credit loan but excluding other fees allowed under section
19 536B.21.

20 5. "*Flexible credit lender*" means a person who enters
21 into three or more flexible credit loans in this state or
22 advertises, solicits, or holds itself out as offering to enter
23 into flexible credit loans in this state.

24 6. "*Flexible credit loan*" is a loan in which all of the
25 following are applicable:

26 a. The debt is incurred for a personal, family, or household
27 purpose.

28 b. The debt is not more than two thousand five hundred
29 dollars.

30 c. The debt is unsecured.

31 d. The debt is payable in substantially equal installment
32 payments of principal and interest for the term of the loan.

33 e. The debt is subject to prepayment in whole or in part at
34 any time without penalty.

35 f. The term length of the loan is for a maximum of

1 twenty-four months.

2 7. "*Licensee*" means a person licensed pursuant to this
3 chapter.

4 8. "*Regularly engaged in the business*" means all of the
5 following:

6 a. Advertising to or making any other solicitation to a
7 resident of this state to offer a flexible credit loan within
8 this state.

9 b. Making three or more flexible credit loans within a
10 calendar year to residents of this state.

11 9. "*Superintendent*" means the superintendent of banking
12 within the banking division of the department of commerce.

13 Sec. 3. NEW SECTION. 536B.3 **Exemptions.**

14 This chapter shall not apply to any of the following:

15 1. A person who does business under the authority of a
16 law of this state, or any other state while regulated by a
17 state agency of that other state, or of the United States,
18 relating to banks, savings banks, trust companies, savings and
19 loan associations, profit sharing and pension trusts, credit
20 unions, insurance companies, or receiverships if the person
21 is regulated by the other law or under the jurisdiction of a
22 court.

23 2. A person who is not regularly engaged in the business of
24 making a flexible credit loan.

25 3. A person who is licensed pursuant to another law of this
26 state to the extent that the person's activities are governed
27 by that law.

28 4. A consumer loan in which the rate of the finance charge,
29 calculated pursuant to the actuarial method, does not exceed
30 the rate of a finance charge permitted under chapter 535.

31 Sec. 4. NEW SECTION. 536B.4 **License required — application**
32 **— fees.**

33 1. Unless exempt under section 536B.3, a person shall not
34 engage in the business of making a flexible credit loan to a
35 resident of this state without first having obtained a license

1 as a flexible credit lender from the superintendent.

2 2. An applicant for a license shall submit an application
3 in writing, under oath, and in the form as prescribed by the
4 superintendent. The application shall require any information
5 that the superintendent determines is necessary.

6 3. At the time of making the application, the applicant
7 shall pay to the superintendent an application fee of one
8 hundred dollars and an initial license fee of two hundred fifty
9 dollars.

10 Sec. 5. NEW SECTION. 536B.5 Grounds for denial of license.

11 The superintendent may deny a license for any of the
12 following:

13 1. The person is insolvent.

14 2. The person has failed to demonstrate the financial
15 responsibility, experience, character, and general fitness to
16 command the confidence of the community and to warrant the
17 belief that the business of the proposed flexible credit lender
18 will be operated lawfully, honestly, fairly, and efficiently,
19 pursuant to this chapter and any other applicable law.

20 3. The person has failed to pay the fees required under
21 section 536B.4, subsection 3.

22 4. The person has failed to demonstrate that the person
23 maintains at least twenty-five thousand dollars in assets
24 readily available for use in the conduct of the business for
25 the licensed office and each licensed branch office or two
26 hundred thousand dollars for all office locations.

27 5. The person or, if the person is an entity, an officer,
28 director, shareholder, partner, or member of the entity, has
29 been convicted of a felony in this or any other state.

30 Sec. 6. NEW SECTION. 536B.6 Issuance of license — form —
31 posting.

32 1. The superintendent shall issue a license to an applicant
33 within thirty days after receiving a complete application
34 unless the superintendent finds grounds for denying the
35 license.

1 2. A license issued under this chapter shall be valid for a
2 term of one year, beginning on January 1 and ending on December
3 31.

4 3. A license issued under this chapter shall remain in full
5 force until surrendered, revoked, or suspended.

6 4. A license issued under this chapter shall not be
7 transferable or assignable.

8 5. A license issued under this chapter shall remain the
9 property of this state. Upon the voluntary surrender of the
10 license by the licensee or the revocation of the license by
11 the superintendent, the licensee shall immediately deliver the
12 license to the superintendent. Surrender or revocation of the
13 license shall not affect any other liability of the licensee.

14 6. A license issued under this chapter shall be kept
15 conspicuously posted at the office of the licensee and any
16 licensed branch office where flexible credit loan transactions
17 are conducted.

18 Sec. 7. NEW SECTION. **536B.7 Surety bond.**

19 1. If, at the time of an initial application or renewal of
20 a license, a valid bond is not on file with the department,
21 the applicant or licensee shall file with the superintendent
22 a surety bond issued by a licensed surety in an amount
23 satisfactory to the superintendent, provided, however, that
24 such amount is not less than twenty-five thousand dollars for
25 each office or two hundred thousand dollars for all office
26 locations. Such bond shall have the state of Iowa named as the
27 obligee in a form approved by the superintendent.

28 2. A bond filed pursuant to this subsection shall require
29 an applicant or licensee to pay any civil penalties and
30 examination fees. A bond shall also cover any claims for
31 damages brought by a consumer residing in Iowa as a result of
32 the licensee's violation of this chapter. The superintendent
33 may also make a claim on the bond for damages brought by
34 a consumer residing in Iowa as a result of the licensee's
35 violation of this chapter. A claim on the bond for damages

1 shall not be made more than two years after the cancellation
2 of the bond or license.

3 3. A bond filed pursuant to this subsection shall be
4 continuous and may be canceled by the surety upon the
5 surety giving no less than thirty days written notice to the
6 superintendent. A cancellation or revocation of the bond or
7 withdrawal of the surety from the bond shall automatically
8 suspend the license issued to the licensee until a new bond
9 or reinstatement notice is filed and approved pursuant to
10 this subsection. The surety shall only be liable for damages
11 incurred or unpaid fees while the bond is in force.

12 Sec. 8. NEW SECTION. **536B.8 License location.**

13 1. A licensee shall designate the principal place of
14 business where the licensee shall conduct flexible credit loan
15 transactions pursuant to this chapter, which shall be indicated
16 on the license as the licensed office location.

17 2. *a.* A licensee may obtain a branch office license from
18 the superintendent for each branch office if the licensee wants
19 to maintain more than one license location.

20 *b.* A licensee may obtain a branch office license by
21 submitting an application in the form as prescribed by the
22 superintendent and paying a fee of two hundred fifty dollars
23 for each branch office license.

24 *c.* The superintendent shall issue a branch office
25 license indicating the address of the branch office if the
26 superintendent determines that the applicant is qualified for
27 the license.

28 3. A licensee shall not conduct flexible credit loan
29 transactions under any name or at any place of business other
30 than the name and location indicated on the license. However,
31 a licensee may do any of the following:

32 *a.* Provide a flexible credit loan by mail or electronic
33 means.

34 *b.* Make an accommodation to a consumer at any location upon
35 a request by the consumer.

1 *c.* Conduct an administrative, loan servicing, or
2 recordkeeping activity at any other location not open to the
3 public provided that the superintendent is notified in advance
4 of that activity.

5 4. A licensee may change the licensed office location or
6 licensed branch office location by providing the superintendent
7 with written notice within ten days of making the change, and
8 the superintendent shall amend the license accordingly.

9 5. *a.* A licensee may conduct flexible credit loan
10 transactions from within any licensed office location or
11 licensed branch office location in which any other business not
12 licensed pursuant to this Title XIII of the Code is solicited
13 or engaged in, or in conjunction with any other business not
14 licensed pursuant to this Title XIII.

15 *b.* If the superintendent determines that the other business
16 is of such a nature or is being conducted in such a manner
17 as to conceal an evasion or violation of this chapter or any
18 rules adopted pursuant to this chapter, or is otherwise being
19 conducted in an unlawful manner, the superintendent may order
20 the licensee to cease the operation of the flexible credit
21 lending business at the location.

22 Sec. 9. NEW SECTION. **536B.9 Renewal of license.**

23 1. A license issued pursuant to this chapter shall be
24 renewed annually by filing an application for renewal with the
25 superintendent on or before December 1 containing information
26 as required by the superintendent to indicate any material
27 changes to an original application or subsequent renewal
28 application and paying a renewal fee of two hundred fifty
29 dollars.

30 2. The superintendent may assess a late fee of ten dollars
31 per day for applications submitted and accepted for processing
32 after December 1.

33 3. The license of a licensee who has not filed a renewal
34 application or paid the renewal fee by December 31 shall
35 expire and the licensee shall not act as a flexible credit

1 lender until the license is renewed or a new license is issued
2 pursuant to this chapter.

3 Sec. 10. NEW SECTION. **536B.10 Disciplinary action.**

4 1. The superintendent, after notice and hearing pursuant
5 to the provisions of chapter 17A, may take disciplinary action
6 against a licensee if the superintendent determines any of the
7 following:

8 *a.* The licensee has violated this chapter, a rule adopted
9 pursuant to this chapter, or any other state or federal law,
10 rule, or regulation applicable to the conduct of the business.

11 *b.* A fact or condition exists that would have warranted the
12 superintendent to deny the original license.

13 *c.* The licensee has failed to pay the annual license fee
14 or has failed to demonstrate that the licensee maintains at
15 least twenty-five thousand dollars in assets readily available
16 for use in the conduct of the business for the licensed
17 office location and each licensed branch office or two hundred
18 thousand dollars for all office locations.

19 *d.* The licensee has failed to file an annual report as
20 required by this chapter when the report was due or within
21 any extension of time provided by the superintendent for good
22 cause.

23 *e.* The licensee is insolvent.

24 *f.* The licensee has violated an order of the superintendent.

25 2. The superintendent may take one or more of the following
26 disciplinary actions against a licensee:

27 *a.* Revoke a license.

28 *b.* Suspend a license until further order of the
29 superintendent or for a specified period of time.

30 *c.* Impose a period of probation under specified conditions.

31 *d.* Impose civil penalties in an amount not to exceed five
32 thousand dollars for each violation.

33 *e.* Issue a citation and warning respecting licensee
34 behavior.

35 *f.* Order the licensee to pay restitution.

1 3. The superintendent may order the emergency suspension of
2 a licensee's license pursuant to section 17A.18A. A written
3 order containing the facts or conduct warranting the emergency
4 action shall be timely sent to the licensee by restricted
5 certified mail. Upon issuance of the emergency suspension
6 order, the licensee shall be notified of the right to an
7 evidentiary hearing. A suspension proceeding shall be promptly
8 scheduled if so requested by the licensee.

9 4. Except as provided in this section, a license shall
10 not be revoked or suspended except after notice and a hearing
11 thereon in accordance with chapter 17A.

12 5. The revocation, suspension, or surrender of a license
13 shall not impair or affect the obligation of a preexisting
14 lawful contract between the licensee and any person, including
15 a borrower.

16 Sec. 11. NEW SECTION. **536B.11 Cease and desist order.**

17 1. If the superintendent believes that a person has engaged
18 in or is about to engage in an act or practice constituting
19 a violation of this chapter or any rule adopted pursuant to
20 this chapter or an order issued by the superintendent, the
21 superintendent may issue and serve a cease and desist order
22 on the person. Upon entry of a cease and desist order, the
23 superintendent shall promptly provide written notice to the
24 person to whom the order is directed that the order has been
25 entered and the reasons for entering the order.

26 2. *a.* A person to whom a cease and desist order is directed
27 may request a hearing in writing within fifteen business days
28 after the date the order was issued. Upon receipt of such
29 written request, the matter shall be set for a hearing within
30 fifteen business days of the receipt of the written request by
31 the superintendent, unless the person requesting the hearing
32 consents to a later date.

33 *b.* If a hearing is requested pursuant to this subsection
34 or is otherwise required by the superintendent, the
35 superintendent, after notice and hearing, shall issue written

1 findings of fact and conclusions of law and shall affirm,
2 vacate, or modify the order. If a hearing is not requested
3 pursuant to this subsection and the superintendent has not
4 otherwise required a hearing, the order of the superintendent
5 shall be final and remain in effect until it is modified or
6 vacated by the superintendent.

7 3. The superintendent may vacate or modify an order entered
8 pursuant to this section if the superintendent finds that
9 a condition that caused its entry has changed or it would
10 otherwise be in the public interest to vacate or modify the
11 order.

12 4. A person aggrieved by a final order of the superintendent
13 may seek judicial review of the order pursuant to section
14 17A.19.

15 Sec. 12. NEW SECTION. 536B.12 Records — examination by
16 superintendent — fees.

17 1. A licensee shall keep such books, accounts, and records
18 as the superintendent may require in order to determine whether
19 the licensee is complying with the provisions of this chapter
20 and with the rules adopted by the superintendent under this
21 chapter.

22 2. A licensee shall preserve for at least two years after
23 making the last entry on any flexible credit loan all books,
24 accounts, and records pertaining to the loan. A licensee who
25 uses an electronic recordkeeping system shall not be required
26 to keep a written copy of the books, accounts, and records
27 if the licensee is able to generate all of the information
28 required under this section in a timely manner for examination
29 or other purposes.

30 3. A licensee shall make any books, accounts, and records
31 kept outside of this state available to the superintendent
32 within three business days upon request by the superintendent.
33 The superintendent may examine such books, accounts, and
34 records at the office of the licensee located outside of this
35 state.

1 4. A licensee shall provide to the superintendent or the
2 superintendent's duly authorized representative access, during
3 normal business hours, to the licensee's offices, files, safes,
4 and vaults regarding the flexible credit lending business or
5 regarding the subject matter of any examination, investigation,
6 or hearing regarding the licensee.

7 5. *a.* The superintendent shall examine the books, accounts,
8 and records of each licensee at least once per year and as
9 needed to secure information required pursuant to this chapter
10 and to determine if a violation of this chapter has occurred.

11 *b.* The superintendent may examine or investigate a complaint
12 or report concerning an alleged violation of this chapter, a
13 rule adopted pursuant to this chapter, or an order issued by
14 the superintendent.

15 6. *a.* A licensee or person subject to an examination or
16 investigation pursuant to subsection 5 shall pay the cost of
17 the examination or investigation. The superintendent may
18 order the cost of an examination or investigation provided
19 under subsection 5 to be paid by the person subject to such
20 examination or investigation, regardless of whether the person
21 is licensed under this chapter.

22 *b.* The superintendent shall determine the cost of an
23 examination or investigation based upon the actual cost of the
24 operation of the finance bureau of the banking division of
25 the department of commerce, including the proportionate share
26 of administrative expenses in the operation of the banking
27 division attributable to the finance bureau as determined by
28 the superintendent, incurred in the discharge of duties imposed
29 upon the superintendent by this chapter.

30 *c.* Failure to pay the cost of an examination or
31 investigation pursuant to this subsection within thirty days
32 of receipt of demand from the superintendent shall subject the
33 licensee or person subject to the examination or investigation
34 to a late fee of up to five percent of the amount of the cost
35 of the examination or investigation for each day the payment

1 is delinquent.

2 Sec. 13. NEW SECTION. **536B.13 Annual report by licensee.**

3 1. A licensee shall annually on or before April 1 file a
4 report with the superintendent giving such relevant information
5 as the superintendent reasonably may require concerning
6 the business and operations during the twelve-month period
7 ending the preceding December 31. Upon good cause shown by a
8 licensee, the superintendent may extend the time for filing the
9 report for a period not to exceed sixty days.

10 2. The annual report shall include a licensee's average
11 annual percentage rate and average loan amount during the
12 twelve-month period ending the preceding December 31.

13 3. *a.* If a licensee fails to file an annual report under
14 this section on or before April 1 or within any extension
15 of time provided by the superintendent for good cause, the
16 superintendent or any person designated by the superintendent
17 may examine the books, accounts, and records of the licensee,
18 prepare the annual report, and charge the licensee an
19 examination fee as established by rule. The fee shall be based
20 on the actual cost of the examination or investigation.

21 *b.* If a licensee fails to file an annual report within the
22 specified time and has not received an extension, the licensee
23 shall be subject to a civil penalty not to exceed five dollars
24 per day until the licensee has filed the annual report. The
25 licensee shall pay the penalty to the superintendent within
26 thirty days after the penalty is levied.

27 Sec. 14. NEW SECTION. **536B.14 Surrender of license.**

28 A licensee may surrender a flexible credit loan license
29 by delivering to the superintendent written notice that the
30 license is surrendered. The surrender does not affect the
31 licensee's civil or criminal liability for acts committed
32 prior to such surrender or entitle such licensee to a return
33 of any part of the annual license fee. The superintendent
34 may establish procedures for the disposition of the books,
35 accounts, and records of the licensee and may require such

1 action as deemed necessary for the protection of consumers that
2 have flexible credit loans that are outstanding at the time of
3 surrender of the license.

4 Sec. 15. NEW SECTION. **536B.15 Impairment of preexisting**
5 **loan.**

6 1. The revocation, suspension, surrender, expiration, or
7 alteration of a license provided under this chapter shall not
8 impair or affect any of the following:

9 a. The obligation of a preexisting flexible credit loan
10 between a flexible credit lender and a consumer.

11 b. The ability or right of a flexible credit lender to
12 service a preexisting flexible credit loan from outside this
13 state.

14 2. If this chapter or any part of this chapter is modified,
15 amended, or repealed, resulting in a cancellation or alteration
16 of any flexible credit lender license or right of a licensee
17 under this chapter, that cancellation or alteration shall not
18 impair or affect the obligation of any preexisting contract
19 between a flexible credit lender and any consumer.

20 Sec. 16. NEW SECTION. **536B.16 Prohibited acts by licensee.**

21 1. A licensee shall not knowingly advertise, display,
22 distribute, broadcast, or televise, or cause or allow to be
23 advertised, displayed, distributed, broadcast, or televised, in
24 any manner, any false, misleading, or deceptive statement or
25 representation with regard to the rates, terms, or conditions
26 of a flexible credit loan. To the extent applicable, all
27 advertising shall comply with the advertising requirements
28 specified in the federal Truth in Lending Act.

29 2. a. A licensee shall not provide a flexible credit loan
30 with an annual percentage rate greater than that provided in 10
31 U.S.C. §987(b), to any of the following:

32 (1) A member of the United States armed forces who is on
33 active duty under a call or order that does not specify a
34 period of thirty days or less.

35 (2) A person on active national guard duty or armed forces

1 military reserve active duty.

2 (3) A dependent as defined in 10 U.S.C. §987(i).

3 b. A licensee shall not provide a flexible credit loan
4 to a consumer unless the consumer has signed a statement, to
5 be included as part of the loan, attesting to whether or not
6 the consumer is a military member or a dependent as defined
7 in 10 U.S.C. §987(i). The statement shall be in the form as
8 prescribed by the superintendent by rule.

9 c. A flexible credit loan made in violation of 10 U.S.C.
10 §987 is void and its terms and conditions unenforceable.

11 Sec. 17. NEW SECTION. 536B.17 Rules.

12 The superintendent may adopt rules to administer this
13 chapter.

14 Sec. 18. NEW SECTION. 536B.18 Operation of business without
15 license — criminal penalty — injunction.

16 A person who has engaged in the business of making a flexible
17 credit loan to a resident in this state without first having
18 obtained a license pursuant to this chapter or while such
19 license is suspended or revoked by the superintendent is guilty
20 of a serious misdemeanor. In addition to the criminal penalty
21 provided in this section, the superintendent may also commence
22 an action to enjoin the operation of a business conducted in
23 violation of this chapter.

24 Sec. 19. NEW SECTION. 536B.19 Disclosures.

25 1. To the extent applicable, a licensee shall comply with
26 the disclosure requirements as set forth in the federal Truth
27 in Lending Act.

28 2. A licensee shall conspicuously display a sign printed
29 in at least twelve-point bold font type at each desk in the
30 licensed office and licensed branch office where flexible
31 credit loan transactions are conducted with the following
32 disclosure:

33 Notice: Before signing any loan documents or otherwise
34 committing to a loan, you may take copies of those documents
35 away from the flexible credit lender's place of business for

1 review.

2 3. A licensee providing electronic flexible credit loans
3 shall conspicuously display the following disclosure on the
4 licensee's internet site:

5 Notice: Before signing any loan documents or otherwise
6 committing to a loan, please read our terms and conditions
7 carefully.

8 4. A licensee who fails to provide disclosures as required
9 under this section shall be subject to a civil penalty not to
10 exceed three hundred dollars for each violation.

11 Sec. 20. NEW SECTION. 536B.20 Maximum interest rate or
12 finance charge.

13 1. A licensee may charge a rate of interest or a finance
14 charge on a flexible credit loan at a rate not to exceed
15 seventeen percent per month.

16 2. This section does not authorize the compounding of a
17 finance charge.

18 Sec. 21. NEW SECTION. 536B.21 Other fees and charges.

19 1. In addition to a rate of interest or a finance charge
20 authorized under section 536B.20, a licensee may collect any of
21 the following fees or charges:

22 a. A delinquency charge if an installment is not paid in
23 full within seven days, equal to five percent of the amount of
24 the installment.

25 b. Court costs and reasonable attorney fees if the flexible
26 credit loan is referred for collection to an attorney other
27 than an employee of the licensee.

28 c. A dishonored check service fee if a licensee receives
29 a check, draft, negotiable order of withdrawal, or similar
30 instrument that is not paid or is not honored by a depository
31 institution, equal to the actual charges assessed by the
32 depository institution.

33 2. A licensee shall not directly or indirectly charge,
34 contract for, or receive any other amount in connection with a
35 flexible credit loan except as provided in this chapter.

1

EXPLANATION

2

The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

3

4 This bill creates new Code chapter 536B to require licensure
5 of persons who wish to provide flexible credit loans to
6 residents of the state.

7 The bill defines "flexible credit loan" to mean a loan that
8 is incurred for a personal, family, or household purpose, is
9 not more than \$2,500, is unsecured, is payable in substantially
10 equal installment payments of principal and interest for the
11 term of the loan, is subject to prepayment in whole or in part
12 at any time without penalty, and is for a term length of a
13 maximum of 24 months.

14 The bill exempts the following persons from the requirements
15 of the bill: a person who does business under any law relating
16 to banks, savings banks, trusts, savings and loan associations,
17 profit sharing and pension trusts, credit unions, insurance
18 companies, or receiverships, a person who is not regularly
19 engaged in the business of making flexible credit loans, as
20 defined in the bill, a person who is licensed pursuant to
21 another Iowa Code chapter to the extent that the person's
22 activities are governed by that Code chapter, or a consumer
23 loan with a finance charge as permitted under Code chapter 535.

24 The bill prohibits a person from engaging in the business
25 of making flexible credit loans to a resident in this state
26 without first obtaining a license from the superintendent
27 of the banking division in the department of commerce. An
28 applicant for a license must submit an application in the form
29 prescribed by the superintendent and pay an application fee of
30 \$100 and an initial license fee of \$250.

31 The bill allows the superintendent to deny a license if
32 the applicant is insolvent, has failed to demonstrate the
33 financial responsibility, experience, character, and general
34 fitness required, as determined by rule, has failed to pay the
35 application and initial license fees, has failed to demonstrate

1 the availability of at least \$25,000 in assets for use in
2 the conduct of the business for the licensed office and each
3 licensed branch office or \$200,000 for all office locations, or
4 if an officer, director, shareholder, partner, or member has
5 been convicted of a felony, if the applicant is an entity.

6 The bill requires the superintendent to issue a license
7 within 30 days of receiving an application unless grounds exist
8 for denying it. A license is valid for one year, from January
9 1 to December 31, remains in full force until surrendered,
10 revoked, or suspended, and is not transferable. A license
11 remains the property of the state and must be immediately
12 returned to the superintendent if a licensee voluntarily
13 surrenders it. A license must be posted conspicuously in the
14 office of the licensee and any licensed branch offices.

15 The bill requires an applicant or licensee to file a surety
16 bond with the superintendent in an amount that is not less than
17 \$25,000 for each office or \$200,000 for all office locations.
18 The bond requires the applicant or licensee to pay any civil
19 penalty and examination fee and shall cover any claims for
20 damages brought by an Iowa consumer as a result of a violation
21 of the bill. The superintendent may also make a claim on the
22 bond for damages resulting from a violation of the bill. A
23 claim for damages on the bond must be made within two years
24 of the cancellation of the bond or license. The bond is
25 continuous and may be canceled by the surety with no less than
26 30 days written notice to the superintendent. A cancellation
27 or revocation of the bond automatically suspends the licensee's
28 license. The surety is only liable for damages incurred or
29 unpaid fees while the bond is in force.

30 The bill requires a licensee to designate the principal
31 place of business to be indicated on the license. A licensee
32 wishing to maintain more than one place of business may
33 obtain a branch office license by submitting an application
34 as prescribed by the superintendent and paying a \$250 fee.
35 A licensee is prohibited from conducting flexible credit

1 loan transactions under any name or location different than
2 what is indicated on the license, provided, however, that
3 a licensee may provide loans by mail or electronic means,
4 make an accommodation to a consumer at any location upon
5 the consumer's request, or conduct an administrative, loan
6 servicing, or recordkeeping activity at any other location if
7 the superintendent is notified. A licensee can change the
8 license location by giving the superintendent written notice to
9 amend the license within 10 days of making the change.

10 The bill authorizes a licensee to conduct flexible credit
11 loan transactions from any licensed office location where
12 other business activities unrelated to flexible credit lending
13 occur. However, the superintendent may order the licensee to
14 cease the operation of the flexible credit lending business at
15 the location if the other business is being conducted in an
16 unlawful manner.

17 The bill allows a licensee to obtain a renewal license by
18 submitting an application with information required by the
19 superintendent no later than December 1 and paying a \$250 fee.
20 A renewal application submitted after December 1 is subject to
21 a \$10 late fee for each day it is late. A license of a licensee
22 who has not filed a renewal or paid the fee by December 31
23 expires.

24 The bill allows the superintendent to take disciplinary
25 action after notice and hearing for any of the following
26 reasons: the licensee violated the bill or any other
27 applicable law; a fact or condition exists which would have
28 warranted the superintendent to deny the original license;
29 the licensee failed to pay fees or demonstrate availability
30 of required assets; the licensee failed to file an annual
31 report; the licensee is insolvent; or the licensee violated
32 an order of the superintendent. The superintendent may take
33 any of the following disciplinary actions against a licensee:
34 revoke a license; suspend a license; impose a period of
35 probation; impose civil penalties in an amount not to exceed

1 \$5,000 for each violation; issue a citation and warning; or
2 order restitution. The superintendent may order the emergency
3 suspension of a licensee's license pursuant to the procedure
4 described in the bill.

5 The bill allows the superintendent to issue and serve a
6 cease and desist order on a person the superintendent believes
7 has engaged in or is about to engage in a violation of the
8 bill. Such person may request a hearing within 15 days after
9 the order is issued. If a hearing is so requested, the matter
10 must be set for a hearing within 15 days after receiving the
11 request. The superintendent may vacate or modify an order if
12 the superintendent finds changed conditions or if doing so
13 would be in the public interest. A person aggrieved by such an
14 order may seek judicial review pursuant to Code section 17A.19.

15 The bill requires a licensee to keep records for the
16 superintendent to determine whether the licensee is complying
17 with the bill for at least two years. A licensee must make
18 all records kept outside of the state available to the
19 superintendent within three business days upon request. A
20 licensee must provide the superintendent with access to
21 the licensee's records during normal business hours. The
22 superintendent must examine the records of each licensee
23 at least once per year and may examine or investigate any
24 complaint of an alleged violation of the bill. A licensee
25 subjected to an investigation or examination of its records
26 by the superintendent must pay a fee determined by the actual
27 cost of the investigation or examination. A licensee who fails
28 to pay the fee within 30 days must pay a late fee of up to 5
29 percent of the amount of the fee for each day the payment is
30 delinquent.

31 The bill requires a licensee to provide the superintendent
32 with an annual report on or before April 1, which may be
33 extended for no more than 60 days upon showing good cause. The
34 report must include the licensee's average annual percentage
35 rate, as defined in the bill, and average loan amount during

1 the 12-month period ending the preceding December 31. The
2 superintendent may examine the records of a licensee who has
3 failed to file an annual report, prepare the annual report, and
4 charge a fee based on the cost of the examination. A licensee
5 who has failed to file an annual report without an extension is
6 also subject to a civil penalty not to exceed \$5 for each day
7 until the report is filed, which must be paid within 30 days of
8 being charged.

9 The bill provides that the revocation, suspension,
10 surrender, cancellation, or alteration of a license will not
11 impair or affect the validity of a preexisting flexible credit
12 loan or the ability of a lender to service a preexisting loan
13 outside of this state.

14 The bill prohibits a licensee from advertising in any false
15 or misleading manner with regards to the rates or terms of a
16 flexible credit loan and requires a licensee to comply with
17 the advertising requirements in the federal Truth in Lending
18 Act. A licensee cannot provide a flexible credit loan to a
19 military member or dependent, as defined in 10 U.S.C. §987(i),
20 with an annual percentage rate greater than that provided in
21 10 U.S.C. §987(b). Before a licensee may provide a flexible
22 credit loan, the consumer must sign a statement attesting to
23 whether or not the consumer is a military member or dependent.
24 A loan made in violation of 10 U.S.C. §987 is void and its terms
25 and conditions unenforceable.

26 The bill provides that a person who has engaged in the
27 business of making a flexible credit loan to an Iowa resident
28 without obtaining a license or while such license is suspended
29 or revoked is guilty of a serious misdemeanor. A serious
30 misdemeanor is punishable by confinement for no more than one
31 year and a fine of at least \$315 but not more than \$1,875. In
32 addition, the superintendent may commence an action to enjoin
33 the operation of a business conducted in violation of the bill.

34 The bill requires a licensee to comply with the disclosure
35 requirements in the federal Truth in Lending Act. A licensee

1 must display a disclosure sign, as described in the bill, at
2 each desk in the licensed office and each licensed branch
3 office and on the licensee's internet site if the licensee
4 provides electronic flexible credit loans. A licensee who
5 fails to do so is subject to a civil penalty not to exceed \$300
6 for each violation.

7 The bill allows a licensee to charge a finance charge,
8 as defined in the bill, on a flexible credit loan at a rate
9 not to exceed 17 percent per month. However, a licensee is
10 not permitted to compound a finance charge. In addition to
11 this, a licensee may collect a delinquency charge, court costs
12 and reasonable attorney fees, and a dishonored check service
13 fee, as described in the bill. A licensee is prohibited
14 from collecting any other charges or fees in connection with
15 conducting flexible credit loan transactions.